FOR MYSORE STATE

H. E. L. A. (1955) Department.

Ms. SERIES.

G.O. No. (Ms) No. 3681, Health.

closed.

Supdt.

Dated 5th December 1955.

[Despatch Abstract.]

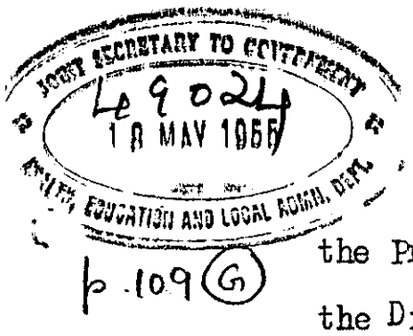
Establishment - Public Health - Mangalore Municipality - Sri K. Nagesh Pai, ex-Health Assistant - Removal from service - Petition against - Rejected.

J.S. H.E.&L.A
May be examined & put up.
16/5

H5

To

The Hon'ble The Minister for Public Health,
Fort St. George,
MADRAS.



P.109(G)

Mh 473-485 (2)

Humble petition dated 11-5-1955 of K. Nagesha Pai, ex-Health Assistant of the Mangalore Municipal Health Officer, Mangalore, C/o Sri K. Ganesh Pai, Mahaveera Printers & Publishers, Ltd., Car-Street, Mangalore - 1.-

The Petitioner above-named begs to appeal against the Proceedings No. D.No. 48-E3/55 dated 15-2-1955 of the Director of Public Health, Madras, confirming the order H1/9773/52 dated 29-10-1953 of the Municipal Health Officer, Mangalore Municipality removing him from service with effect from that date on the following among other grounds:-

The petitioner was entertained in the Mangalore Municipal Health office in 1947 as a Birth and Death Registrar. In the following year, he was unofficially asked to attend to vaccination work in addition to his own duties as small-pox was then rampant in the town. Next year, the Director of Public Health, Madras, issued a Circular R.No.75958-3 Epi. 49 dated 14-12-1949 prescribing a fee of Rs.5/- and Re.1/- respectively for the issue of International Inoculation and Vaccination Certificates and enjoining on the Municipal Health Officer to collect and remit the amounts to the Treasury. The circular also prescribed two separate registers - one for vaccination and the other for inoculation. These registers were maintained by the then Municipal Health Officer for some time. Later this work was being got done by one of the clerks of the Health Office. Still, the Municipal Health Officer continued to collect the -

Nor in file

amounts and note them in the relevant columns of the register himself, after doing which he used to hand over the said amounts to the Head Clerk for remittance into the Treasury. The Head Clerk was preparing challans in duplicate the next day and remit the amounts into the Imperial Bank of India, through the peon of the Municipal Health office. The receipted challans when received from the Bank were filed by the Head clerk and were kept in his personal custody. Rama Rao did this work were ke so long as he was Head clerk. On 30-7-1951 he was transferred to the main office and thereupon the work of the maintenance of the registers, collection of the fees, and the remittance thereof to the Treasury develved upon his successor, one Arya. He absconded in February 1952 for what reason, I need not say. It will be anybody's guess. M. Vishwanatha then succeeded him as Head Clerk.

The Municipal Health Officer also changed in another three months. All these things resulted in a laxity in the maintenance of the registers. The entries in them came to be written up by any clerk who happened to have leisure at the time. It will not, therefore, be a matter for surprise, if some of these entries are found to be in the petitioner's handwriting. This fact alone - the petitioner avers - cannot in all fairness lead to the inference, as has now been wrongly drawn, that the petitioner was thereby saddled with the responsibility of maintaining the registers and much less of accounting for the registration and vaccinationfees that were being collected. This confusion and muddle caused by the non-observance of the rules by the Municipal Health Officer rapidly grew worse so that by 16-6-1952 the misappropriation of Rs.828/- whether by the peon Abdul Gaffoor or by any other one or more persons, could no longer be concealed.

A criminal complaint was filed against the petitioner

3 2 6

and the peon Abdul Gaffoor under section 409 and 477A I.P.C. before the Sub. Divisional Magistrate, Sri Cariappa, R.D.O. After an elaborate enquiry and trial the petitioner was discharged. The judgment discloses that same office orders, on the basis of which it was sought to fix liability on the petitioner were found to be not genuine but squeezed into the office order book. A perusal of the judgment would satisfy the authorities as regards the accuracy of this statement. Suffice it to say that subsequently Abdul Gaffoor produced the full amount of Rs.828/- before the Commissioner who was then the Health Officer in charge.

Unfortunately the trying Sub. Divisional Magistrate without any adequate material before him has observed in the judgment that the petitioner and the peon Gaffoor have acted irresponsibly and are not fit to be employed in Government service, which led to an office enquiry as a result of which the petitioner has been removed from service.

para 16, p 242 (2)

p 485 (2)

p 357 (2)

(i) that he (the petitioner) failed to scrutinise verify and see timely remittances into the Imperial Bank of India, Mangalore, under Provincial funds by means of chalans of the inoculation and vaccination fees collected by him in respect of issues of international vaccination certificates and which were entered in the relative manuscript registers maintained for the purpose by him during the period mentioned in para one above.

(ii) That he grossly neglected his duties, and acted irresponsibly in the discharge of his duties in

having allowed the Public Health peon Abdul Gaffur to make false entries of dates and numbers in red ink in column 7 of the inoculation register and in some items in the last column of vaccination register maintained by him for the purpose of issuing international and vaccination certificates respectively against Serial Nos. noted in para 3 above and also making unauthoritative and irrelegant entries at the bottom of the pages commencing from Serial Nos. 377, pages 32 to 52 as "received the above amount for crediting in the Bank" signed by the said peon under different dates noted thereon.

(iii) that he was responsible for the delay in remittance and for the defalcation of Rs.828/- which resulted due to reasons mentioned in detail above.

(vi) that he deliberately suppressed his irresponsible action and failed to bring the above facts to the knowledge of the authorities concerned in time.

A mere glance at these charges would show that all of them would stand only if the statement that the petitioner had been made responsible for the maintenance of the registers in question, were true. The genuineness of the documents bearing on this point has been negatived by the Criminal Court in unequivocal terms. Yet this finding has been brushed aside and the petitioner removed from service solely on the strength of the documents the falsity of which had been proved beyond any shadow of doubt.

The decision arrived at as a result of the departmental enquiry is liable to be set aside for the reason that the relevant records were not made available to him though he had specifically asked for them. The rules relating to civil services (Appeals) require that a copy of the report of the enquiring officer should be furnished to the

person whose conduct is under investigation. This was not done and the petitioner was consequently handicapped in his defence. The enquiry was further vitiated by the fact that three of his important witnesses Sri P. Rama Rao, Sri M. Vishwanatha (Head clerks) and Dr. C.S. Ramachandra Pai (Municipal Health Officer) whom the petitioner wanted to be examined on his behalf to prove that it was not his duty to maintain the registers nor did he, as a matter of fact, maintain them, were not called. This shows the bias of the officer conducting the Departmental enquiry. It also robbed the enquiry of any sense of fair-play and resulted in a failure of justice. In this connection, the petitioner begs to invite the kind attention of the Government to the case disposed of in the Madras High Court in September 1954. In that case one C.K.Ayya Gowder, Tahsildar who was working as T.S.O. at Erode in 1949-50 was first dismissed from service and then compulsorily retired on the charge that he made a remark in derogation of the Congress Ministry. The case was enquired into by the Tribunal set up by the Government Rule 8 (a) of the Disciplinary Proceedings Tribunal Rules provide that at the enquiry oral evidence shall be heard and the person charged shall be entitled to cross-examine witnesses, to give evidence in person and to have such witnesses called as he may wish. The T.S.O. asked the D.S.O. to be called as a witness, but the Tribunal rejected the request. His Lordship P. Rajagopalan J. who delivered the judgment of the High Court remarked as follows:- "Under Rule 8 (a) the petitioner had a right to inform the Tribunal whom he wanted to be called as a witness. That rule was contravened by the -

6

Tribunal in concluding the enquiry without calling the D.S.O. as a witness. Even principles of natural justice were obviously violated by the refusal to examine the D.S.(It would even amount to the denial of a reasonable opportunity to the petitioner to be heard in full in his defence. The acceptance of the finding of the Tribunal based on such improper refusal does amount to illegality".

The petitioner submits that his case is similar to Ayya Gowder's case except for the fact that the former was enquired into by the departmental superior instead of by the tribunal. The principles involved in both the c ases are the same. The petitioner, therefore, trusts and prays that his case may be viewed from this aspect and justice done to him by ordering his re-instatement in service.

For which act of justice, the petitioner will ever be grateful.

K. Nagesh Rai

Petitioner.

Ex. Health Assistant .

Mp3-6 Dept to DPH.

HELA (HS)

Conf. 49024/55 to DPH

Memo. 49024/55 HS-1 dt 16.6.55

10/11/16

Estt - P.H. - Mangalore mcty. Sri K. Nagesha Pai Ex. H.A. Removal - from Service.

pp1-6 cf

From Sri K. Nagesha Pai letter dt nil

Referred to the DPH for early remarks.

16/6

14.6.55

AV 15/6/55

14.6.55

To

The DPH.

(with a copy of pp1-2 cf and pp3-6 cf in orgl. to be retd. with reply)

Note. On receipt of the remarks of the DPH the file will be circulated to M(H) with reference to his minutes on p1 cf.

14.6.55

AV 15/6/55

14.6.55

4

PUBLIC HEALTH DEPARTMENT. 5

From
Dr.T.S.Adisubramaniam, D.I.H.(England),
Director of Public Health,
Madras.

To
The Secretary to Government,
Health Education and Local Administration Department,
Fort St. George,
Madras.

X-X-X-

AV.

HELA(HS) Dept

Memo. No. 49024. HS/55-2, Health
17.8.55

Estt -- P.H. -- Mangalore Mty

Sri K. Nagesh Pai, Ex-Health Assistant - Removal from Service Memorial to Govt

From the D.P.H., Madras, R. No. 42775-I-E3/55, dated 13-7-1955

The D.P.H., Madras, is requested to state whether he has obtained the remarks of the Commr., Mangalore Mty., on the petn. of Sri K. Nagesh Pai ex-Health Assistant (enclosed herewith) forwarded with his letter cited and if not, he is requested to obtain and forward the same, with his remarks thereon, if any, together with the municipal office records, connected with the case

13.8.55 AV 16855 17.8.

13.8.55

To the D.P.H., Madras.
Copies of Mr 1-2 Cf and (with pages ~~6~~ 5)
Mr 3-6 Cf in orgl. to be returned with reply.
Copy to the Commr., Mangalore Mty

E. D. FATH BRANCH

Encl. sent on 17/9/55

From
Dr.T.S. Adisubramaniam,
D.I.H.(England),
Director of Public Health,
Madras.6

To
The Secretary to Government,
Health Education and Local
Administration Department,
Fort St. George, Madras.

=x=x=x

G1/22587/55

Municipal Office, Mangalore.
Dated 29th Septr. 1955.

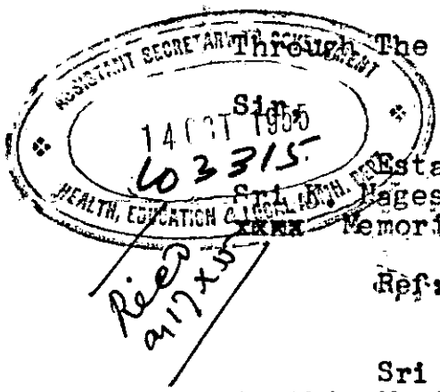
From

Sri A. K. Raghavan, B.A., B.L.,
Commissioner, Mangalore Municipality.

To

The Director of Public Health, Madras.

Through The Chairman, Municipal Council. Mangalore.



Sir,

Sub:- Establishment - Public Health - Mangalore Municipality - Sri K. Nagesh Pai, Ex. Health Assistant - Removal from service - Memorial to Government.

Ref:- Your letter R.No.42775-2-E3/55 dated 26-8-1955.

Sri K. Nagesh Pai, Ex-Health Assistant was in service in this Municipality as a temporary Birth and Death Registrar from 1-5-1947 to 14-2-50 and he was later employed as a Health Assistant under regulation 10-Explanation II - Item(v) of the P.H.(Establishment) Regulations. He was kept under suspension from 17-9-52 and was removed from service with effect from 29-10-53.

2. A fee of Rs.5/- for vaccination and inoculation certificates in international form and Re.1/- in other cases was being collected by the Municipal Health Officer as (ex-Officio) Port Health Officer and remitted to the Govt. Treasury as per circular No.75958-3-Epi/49 dated 14-12-49 of the Director of Public Health, Madras. During the month of June, 1952 it was suspected that the fees so collected was not being regularly remitted to the Government Treasury, and on investigation it was revealed that sum of Rs.828/-(Eight hundred twenty eight only) was misappropriated during the period from 1-8-51 to 15-6-52. The said amount was however credited in the S.K. District Treasury on 2-7-52 as per chalan No.97 by Sri Abdul Gafoor ex. peon, who was being entrusted with the fees collected for crediting in the Govt. Treasury in connection with the issue of inoculation and vaccination certificates. Sri K. Nagesh Pai, ex.Health Assistant was attending to the vaccinations and inoculations before the requisite certificates are issued by the Municipal Health Officer on collecting the fees prescribed. The Inspector of Police, Mangalore, on being requested to investigate the matter observed that the investigation "prima facie" disclosed offences of criminal breach of trust and tampering of public documents by Sri K. Nagesh Pai, Ex.Health Assistant and Sri Abdul Gafoor, Ex.Peon. A charge sheet was filed against the individuals in the court of the Sub Divisional Magistrate, Mangalore, in C.C.No.638/52.

3. The Sub Divisional Magistrate held that when the collection work of the fees is the province of the Municipal Health Officer, it was difficult to say why these individuals were allowed to handle monies and ~~were~~ if they were allowed there was obsolutely no evidence before him that certain specific amounts were handed over to them or were recieved by them and they misappropriated these amounts. He also held that no satisfactory case had been made out against the accused and discharged them. However, he made an observation that both the accused has acted irresponsibly in the discharge of their duties and that they are not fit persons to be employed in any Government service.

4. Thereafter disciplinary proceedings was instituted against Sri K. Nagesh Pai, Ex.Health Assistant under the provisions of regulation 32 of the P.H.(EStablishment) Regulations, and he was removed from service with effect from 29-10-53. Dr. C. S. Ramachandra Pai, Who was the Municipal Health Officer,

P.T.O.

Mangalore, during the period from 20-3-1951 to 15-5-1952, was the principal witness in this case. It is observed from the deposition statement dated 12-1-1953 of Dr. C. S. Ramachandra Pai, recorded by the Sub Divisional Magistrate, and his confidential D.O. letter dated 14-9-1953 addressed to Dr. M. D. Edward who was later working as Municipal Health Officer, Mangalore, that the Ex.Health Assistant, Sri K. Nagesh Pai, was undoubtedly guilty of negligence of duty.

5. The Municipal file R.Dis.9773/52 is enclosed together with the petition of Sri Nagesh Pai received with your letter R.No.42775-2-E3/55 dated 26-8-55, and the service register of the individual.

COMMISSIONER.

Forwarded

CHAIRMAN, M.C., 10/10

Copy submitted to the Secretary to Government, Health, Education and Local Administration Department with reference to Govt. Memo No.49024 H5/55-2 Health dated 17-8-1955.
Sr.30.9

Encls: 1) Mc. file R.Dis.9773/52.
2) Letter of Sri Nagesh Pai.
3) Service Register of Sri Nagesh Pai.
4) Office Order Book (1951-52).

PUBLIC HEALTH DEPARTMENT

17

From
Dr. T.S. Adisubramani—,
D.I.H.(England),
Director of Public Health,
Madras. 6.

To
The Secretary to Government,
Health, Education and Local
Administration Department,
Fort St. George, Madras.9.

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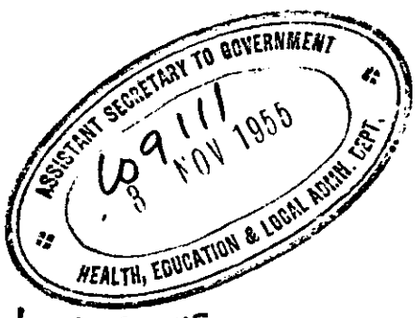
R.No. 42775-E3/55 dated 28th October 1955.

Sir,



Sub: Establishment - Public Health - Mangalore Municipality - Sri. K. Nagesh Pai, Ex-Health Assistant - Removal from service - Memorial to Government

Ref: Government Memo No.49024-H5/55-2 Health dated 17-8-55.

p 11 ante

In retransmitting herewith the papers received with the Government Memo cited, I forward a copy of the letter G1-22587-55 dated 29-9-55 together with the Municipal Office records received from the Municipal Commissioner, Mangalore for favour of perusal by Government. This office D.No. 48-E3/55 dated 15-2-55 connected with the case has already been forwarded to Government with this office letter R.No. 42775/1/E3/55 dated 13-7-55 I have no further remarks to offer in the matter.

p 11 ante below

G

p 9 ante

Yours faithfully,

For Director of Public Health, Madras.

31-10-55

Copy of the letter No. G.1-22587/55 dated 29-9-55 from The Municipal Commissioner, Managlore, addressed to the Director of Public Health, Madras.

Sub: As above.

Ref: Your letter R.No.42775-2-E3/55 dated 26-8-55.

Same as p 15 ante

Sri. K. Nagesh Pai, Ex-Health Assistant was in service in this Municipality as a temporary Birth and death Registrar from 1-5-47 to 14-2-50 and he was later employed as a Health Assistant under regulation 10 - Explanation II - Item (V) of the P.H. (Establishment) Regulations. He was kept under suspension from 17-9-52 and was removed from service with effect from 29-10-53.

2. A fee of Rs.5/- for vaccination and inoculation certificates in international form and Re.1/- in other cases was being collected by the Municipal Health Officer as (ex-Officio) Port Health Officer and remitted to the Government Treasury as per circular No.75958-3-Epi/49 dated 14-12-49 of the Director of Public Health, Madras. During the month of June, 1952 it was suspected that the fees so collected was not being regularly remitted to the Government Treasury, and on investigation it was revealed that sum of Rs.828/-(Eight hundred twenty eight only) was misappropriated during the period from 1-8-51 to 15-6-52. The said amount was however credited in the S.K. District Treasury on 2-7-52 as per chalan No.97 b

Sri.

same as para 15 above

Sri. Abdul Gafoor ex. peon, who was being entrusted with the fees collected for crediting in the Govt. Treasury in connection with the issue of inoculation and vacc-ination certificates. Sri.K.Nagesh Pai, ex. Health Assistant was attending to the vaccinations and inoculationsbefore the requisite certificates are issued by the Municipal Health Officer on collecting the fees prescribed. The Inspector of Police, Mangalore, on being requested to investigate the matter observed that the investigation "prima facie" disclosed offences of criminal breach of trust and tampering of public documents by Sri.K.Nagesh Pai, Ex.Health Assistant and Sri. Abdul Gafoor, Ex-Peon. A charge sheet was filed against the individuals in the court of the sub-Divisinal Magistrate, Mangalore, in C.C. No.638/52.

3. The Sub Divisional Magistrate held that when the collection work of the fees is the province of the MunicipalHealth Officer, it was difficult to say why these individuals were allowed to handle monies and even if they were allowed there was obsolutely no evidence before him that certain specific amounts were handed over to them or were received by them and they misappropriated these amounts. He also held that no satisfactory case had been made out against the accused and discharged them. However, he made an observation that both the accused has acted irresponsibly in the discharge of their duties and that they are not fit persons to be employed in any Government service.

4. Thereafter disciplinary proceedings was instituted against Sri. K. Nagesh Pai, Ex.Health Assistant under the provisions of regulation 32 of the P.H.(Establishment) Regulations, and he was removed from service with effect from 29-10-53. Dr. C.S. Ramachandra Pai, who was the Municipal Health Officer, Mangalore, during the period from 20-3-1951 to 15-5-1952, was the principal witness in this case. It is observed from the deposition statement dated 12-1-53 of Dr.C.S. Ramachandra Pai, recoreded by the Sub-Divisional Magistrate at page 295 and his confidential D.O. letter dated 14-9-1953 addressed to Dr. M.D. Edward who was later working as Municipal Health Officer, Mangalore at Page 413, that the Ex.Health Assistant, Sri. K.Nagesh Pai, was undoubtedly guilty of negligence of duty.

5. The Municipal file R.Dis. 9773/52 is enclosed together with the petition of Sri. Nagesh Pai received with your letter R.No. 42775-2-E3/55 dated 26-8-55, and the service register of the individual.

FORWARDED. / True Copy /

Copy submitted to the Secretary to Government, Health,Education and Local Administration Department with reference to Govt.Memo No.49024 H5/55-2 Health dated17-8-55.

/ True Copy /

FORWARDED.

(sd).....
Chairman,
Mangalore Municipal Council.
10-10-55.

For Director of Public Health,Madras.

ks.1.11.55.

H.E.L.A.(H5) Deptt

~~(Confdl.)~~ ~~Memo~~.No.49024.HV/55

ESTABLISHMENT - P.H. - Mangalore Mty. - Sri K. Nagesh Pai, ex-Health Assistant Removal from service - Petition against Rejected.

...

From Sri K. Nagesh Pai, ex-Health Assistant, Mangalore Mty., Petition, dated 11-5-1955.
From the D.P.H., R.No. 42775.1.E3/55, dated 13-7-1955.
From the Commr., Mangalore Municipality, G1.22587/55, dated 29-9-1955.
From the D.P.H., R.No.42775.E3/55, dated 28-10-1955.

...

G.O.R. 3681 Health dated 5.12.55

~~The petitioner is informed that his petition is rejected.~~

The petition of Sri K. Nagesh Pai Ex-Health Assistant Mangalore Municipality is rejected

CENTRAL DESPATCH BRANCH
Vanned
Forwarded 3/12
Dispatched by
Messenger.
8/12/12
Date ___ 195 . Despatcher's Initials.

2/12/55
2.12.55

To Sri K. Nagesh Pai, ex-Health Assistant, C/O Sri K. Ganesh Pai, Mahaveera Printers and Publishers Ltd., Car Street, Mangalore-1
THROUGH the Commissioner, Mangalore Mty. Mangalore (South Kanara Dist.)
To the Commissioner, Mangalore Mty., through the C.M.C., Mangalore. (with Municipal Office, Office Orders Book, Service Book of Sri K.Nagesh Pai and Mangalore Municipal Office file R.Dis.9773/52, dated 8-3-1955 BY REGISTERED POST) (2)
To the D.P.H., Madras-6 (with his office file D.No.48.E3/55, dated 15-2-1955 BY REGISTERED POST) (6)

2 s/cs.

8.12.55

3.12.55

Notes

H.E.L.A (Hs) Dept

Urgent

Memo. No. 4902. H5/55

Esh. - P.H. - Mangalore Mty. - Sri K. Nagesh Pai, Ex-Health Assistant - Removal from service. Memorial to Govt.

Pr 1-6 Cf

From Sri K. Nagesh Pai, letter, d/Nil.

Ibid

A Copy of the reference cited is forwarded to the Comm. Mangalore Mty., for ~~urgent~~ specific remarks. He is also requested to send the Municipal office files connected with the case.

12-8-55

12.8.55

To the Commr., Mangalore Mty. (thro' the C.H.C. Mangalore) (with Copies of Pr 1-6 Cf)

Copy

Note: The petitioner Pr 1-6 Cf. and the remarks of the D.P.H. at p. 9 Cf. may

be perused. Before proceeding further with the case, it seems better to call for the remarks of the Municipal Commr, Mangalore in this case. The draft memo overleaf is subd. for approval.

12/8/55

12.8.55

Ask the D.P.H whether he has obtained the remarks of the Commr on the petition forwarded by him and if not to obtain and forward the same to Govt urgently together with the municipal office records connected with the case.

AV
13855

to the above order, a revised draft memo is subd. for approval.

13.8.55

13.8.55

AV
16855

17.8.55

JS

(Issued as Memo. No. 49024. Hi/55-2, Health, dt 17.8.55)
From the D.P.H., R. No. 42775. 3. 23/55, dt 24.9.55.
From the Commr, Mangalore Mty., G1/22587/55, dated 29.9.1955 to the D.P.H., Madras.

pdict
p13 cf
pp 15-16 cf

Please see the letter from the Comm., Mangalore Mty., to the D.P.H. at Pr 15-16 cf. The remarks of the D.P.H. in the matter may be awaited till 10.11.55.

20/10/55

AR 21.10.55

20.10.55

Pr 17 cf

From the D.P.H., R.No.42775.E3/55, dated 28-10-1955.

Extracts from the minutes of M.(H) on page 1 c.f

"J.S., H.E.L.A.

Pr 1 cf

May be examined and put up.

A.B.Shetty,
16-5-1955.
M.(H)".

...

Pr 1-6 cf.

The file deals with a petition from Sri K. Nagesh Pai. who was a Health Assistant under the Mangalore Municipality against his discharge from service. An appeal preferred to the D.P.H., was rejected by him. Though Government are not an appellate authority in similar cases, they can call for relevant papers and pass such orders as they deem fit. The facts of the case are examined below:—

(G) p 109.

Public Regulation 34, p. 71 cf. p. 15 cf

para 1, p 15 cf

2. Sri K. Nagesh Pai was a temporary Birth and Death Registrar in the Mangalore Municipality during the period from 1-5-1947 to 14-2-1950 and was later on employed as a Health Assistant under Regulation 10 - Explanation II - Item (v) of the Public Health Establishment (Local Authorities) Regulations.

wit p.c. f

para 2, p 15 cf

3. A fee of Rs.5 for each vaccination and inoculation certificate in international form and

Re.1 in other cases was being collected by the Municipal Health Officer, Mangalore and remitted to the Government Treasury as per instructions issued by the D.P.H., Madras. The collection and remittance of fees into the Treasury and the Imperial Bank was entrusted to the Head Clerk of the Health Section (Sri P.Rama Rao). On his transfer one Sri. Arya was appointed as Head Clerk and he later on absconded. then this work was entrusted to Sri K. Nagesh Pai.

para 2, p15 CF

In June 1952, it was suspected that the fee collected was not being regularly remitted into the treasury and on an investigation it was revealed that a sum of Rs. 828 was misappropriated during the period from 1-8-1951 to 15-6-1952. The Inspector of Police, Mangalore, who was requested to investigate into the matter, observed that the investigation "prima facie" disclosed offence of criminal breach of trust and tampering of public documents by Sri Nagesh Pai, Health Assistant and Sri Abdul Gaffoor, Peon through whom remittances into the Bank were made. A charge sheet was filed against the individuals in the Court of Sub-Divisional Magistrate, Mangalore. The Sub-Divisional Magistrate held that as the collection work of the fees was the province of the Municipal Health Officer, it was difficult to say why these individuals (Health and the peon) were allowed to handle monies and even if they were allowed there was absolutely no evidence before him to prove that certain specific amounts were handed over to them or were received by them and they misappropriated these amounts. He also held that no satisfactory case had been made out against the accused and discharged them. However, he made an observation that both the accused had acted irresponsibly in the discharge of their duties and that they were not fit persons to be employed in any Government service.

P. 15 CF also p459 (2)

p 111 (2)

X p238 (2)

para 16, p242 (2)

Please see the letter from the Comm., Mangalore Mty., to the D.P.H. at pp 15-16 c.f. The remarks of the D.P.H. in the matter may be availed till 10.11.55.

20/10/55

20.10.55

21.10.55

p 17 c.f

From the D.P.H., R.No.42775.E3/55, dated 28-10-1955.

Extracts from the minutes of M.(H) on page 1 c.f.

"J.S., H.E.L.A.

p 1 c.f

May be examined and put up.

A.B.Shetty,
16-5-1955.
M.(H)".

...

pp 1-6 c.f.

The file deals with a petition from Sri K. Nagesh Pai, who was a Health Assistant under the Mangalore Municipality against his discharge from service. An appeal preferred to the D.P.H., was rejected by him. Though Government are not an appellate authority in similar cases, they can call for relevant papers and pass such orders as they deem fit. The facts of the case are examined below:—

G.O. p 109.

Appointment 24

para 1, p 15 c.f.

2. Sri K. Nagesh Pai was a temporary Birth and Death Registrar in the Mangalore Municipality during the period from 1-5-1947 to 14-2-1950 and was later on employed as a Health Assistant under Regulation 10 = Explanation II - Item (v) of the Public Health Establishment (Local Authorities) Regulations.

W.P. p.

para 2, p 15 c.f.

3. A fee of Rs.5 for each vaccination and inoculation certificate in international form and

p 353-354 (2)

5. Thereafter disciplinary proceedings were instituted against Sri Nagesh Pai by the Municipal Health Officer, Mangalore and Sri Abdul Gaffoor. The main charges against Sri Nagesh Pai were -

p 357 (2) & p. 479 (2)

(1) that he failed to scrutinise and verify the registers to see that remittances were sent to the Bank in time.

(2) that he made some unauthorised entries in the Register and allowed Sri Abdul Gaffoor to make some unauthorised entries in the Register.

(3) That he was responsible for the delay in the remittance of the money and the consequent defalcation.

(4) That he deliberately suppressed his irresponsible action and failed to bring facts to the notice of the authorities.

p. 152 (G) also p 479 (2)

The findings of the Municipal Health Officer in respect of the above charges were as follows:

Charge 1: Sri Nagesh Pai had been entrusted with the work of maintaining the registers by the M.H.O. and as such it was his duty to scrutinise the register. Entries in the registers showed that Sri Pai was maintaining the registers.

p 481 (2) & p 152 (G)

Charge 2: In addition to the findings under charge 1, the D.M.O. and the Assistant D.M.O. had stated that Sri Pai was taking the registers to them while they were holding addl. charge of the post of the Port Health Officer and that the registers were produced by Sri Pai when called for. Thus it was proved that the registers were under his custody and that he was responsible for the unauthorised entries.

481-483 (2) & p 152 (G)

Charges 3 and 4: The then M.H.O. stated that the practice was for the parties to pay the fees to the Health Assistant Sri Nagesh Pai. During

the period from 15-5-1952 to 16-6-1952, the appellant had received certain sums which he remitted into the Bank after a delay of over one month. Thus he was responsible for the temporary defalcation.

If Sri Pai had brought to the notice of the authorities in time certain false entries made by Sri Abdul Gaffoor in the registers, there would not have been the temporary misappropriation. He had, undoubtedly, joined hands with the peon in deliberately deceiving the authorities and thus the fourth charge was also considered proved.

Thus, the Municipal Health Officer considered that all the charges against Sri Nagesh Pai were proved and removed Sri Pai from service.

6. In his appeal to the D.P.H., Sri Nagesh Pai argued as follows:-

Charge 1: The petitioner stated that the office order which made him responsible for the maintenance of the register was a later creation pasted between O.O. Nos. 15 and 16 without any serial number. The Magistrate was convinced that the O.O. was a later creation. The O.O. was typed and pasted in July 1952 and he was asked to acknowledge the same under date 1-8-1951. The Registers were in the custody of the Head Clerk. When the Clerks were busy he was asked to make entries therein after vaccinating the parties. He was an out-door worker with no responsibility for maintaining the registers. The register also contained entries made by the M.H.O. etc.

Charge 2: The appellant was not the custodian of the registers and hence, he was not responsible for the entries made therein as stated under charge 1. He made entries at the bottom of the page and got the signature of Abdul Gaffoor as per instructions of the M.H.O.

p.154 & p154 (G)

Charge 3: The appellant was not responsible for the collection of amounts and its remittance into the Bank. The M.H.O. was himself responsible for it and he had said so in the Court. Thus the appellant was not responsible for the delay in the remittance and defalcation.

ibid

Charge 4: It was not his duty to find out irregularities and report the matter to the M.H.O.

p.155 & p 155 (G)

In addition, the appellant pointed out the following irregularities in the disciplinary action:

(1) that the appellant was not given an opportunity to examine the following witnesses, though he wanted to examine them in his explanation dated 14-8-

Sri P. Rama Rao.
Sri M. Viswanath.
Dr.C.S.Ramachandra Pai.

(2) that his explanation was referred to Dr. C.S.Ramachandra Pai for remarks, but the remarks of Dr. Pai were not shown to him.

(3) the depositions of the appellant were not taken down by the Enquiring Officer, but was recorded by Sri Viswanath, the present Head Clerk of the M.H.O

(4) the appellant asked for certain chalans in which his signature was alleged to be found but the chalans were not shown to him on the plea that they had been sent to the D.P.H.

p.156 & p 155 (G)

(5) the appellant asked for the perusal of some previous records, but was denied the opportunity to peruse them.

(6) that he was not served with a final 'show cause' notice and given an opportunity to put in a final defence statement.

7. The facts of the appeal of Sri Nagesh Pai are discussed in greater detail on pages 158 to 166 of the D.P.H's office file D.No.48-E3/55, dated 15-2-1955

put up at (G).

As regards charge 1, the M.H.O. was responsible for the collection of the amounts and the remittance thereof in the Bank, But the M.H.O. could, no doubt, ask one of his subordinates to attend to this work. Accordingly the Head Clerk of the office was entrusted with this work. As Sri Arya, the then Head Clerk absconded, the appellant was in charge of this work from 1-8-1951. Whether the Office order entrusting the work to him was valid or not he never complained that the work was not legitimately his.

M, p 158 (G)

p 159 (G)

S, p 160 (G)

As regards charge 2, the M.H.O. had admitted that the registers were not under lock and key and that occasionally they were seen on his table. Entries were made by Sri Nagesh Pai, the M.H.O. and another vaccinator.

Z, p 165 (G)

Charges 3 and 4: The action of the petitioner in getting the receipt of the peon in the register would show some anxiety on his part in the affair. Though it was not conclusively proved that the appellant was guilty in a purely judicial way even the Magistrate considered that there was room for suspicion against the Health Assistant.

p 166 (G)

M, p 164 (G)

The A.D.M.O. and the D.M.O. stated that the appellant told them that he had received fees from the parties. Sri Viswanath had also stated in the Court that he had seen the appellant receiving fees though he was not able to say from whom etc. The M.H.O. also stated that he had passed on the payments received by him to the appellant.

M p 164 (G)

p 165 (G)

A person of the type of the appellant, who had denied all responsibility for the maintenance of the register and receipt of fees on the plea that officially the M.H.O. and the office were responsible for such maintenance and collection and remittance,

need not have made these entries even under the instructions from the M.H.O., if he had thought the responsibility for the delay in remittance etc. fell on the M.H.O. and the office.

8. Of the six irregularities pointed out by the appellant in the disciplinary action against him, at least one was significant that though he wanted to cross-examine Sri P. Rama Rao etc., in his explanation, he was not allowed this and in doing so, no specific reason had been recorded in writing. This does not seem a grave irregularity. The charges have been proved.

9. In the above circumstances and in view of the fact that the Magistrate had found him unfit for service, the D.P.H. declined to interfere in the matte

10. The present appeal petition on pages 1-6 c.f. does not contain any new facts warranting special consideration.

Submitted for orders.

~~11. The case may be circulated to M.(H) with ref. to his minutes extracted on page 3 ante.~~

~~Public (Services) may perhaps see the remarks and paragraphs 8 above.~~

26.11.55

NRP
28.11.55

AV
30/11/55

Addl Secy
Serious misd
The charges are
fully proved by the records.
The appellant is clearly unfit for
the service & the only right
Hence the petition may be rejected.

1.12.55

SECRETARY TO GOVERNMENT
1 DEC 1955
HEALTH, EDN. & LOCAL ADMN. DEPTT.

1/12

H.E.L.A.(H5) Deptt.

With ref. to the orders in circulation, a draft Memo. is submitted for approval.

2/12/55

2.12.55

3.12.55

A.D. (H.S.)